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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 803 सन् 2001

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANTS:
Accused (In Jail)

1. **Daulatram, S/o Sadram Teli, aged about 53 years.**
2. **Nepal, S/o Tilochan Sahu, aged 45 yrs, Both R/o Vill. Jamjuda, P.S. Basna, Distt. Mahasamund (C.G.)**

-Versus-

RESPONDENT:

State of Chhattisgarh, Through Police Station Basna, Distt. Mahasamund (C.G.).

(Criminal appeal under Section 374 (2) of the Cr.P.C.)

D.B.: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ.

23-7-2007:-

Shri Manoj Paranjpe with Shri V.A. Goverdhan, counsel for the appellants.

Shri Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 19th July, 2001 passed by the Special Judge, Raipur in S.T. No.53/2000 whereby learned Special Judge after holding accused/ appellants namely, Daulat & Nepal guilty for commission of offence under Section 302 of the I.P.C. read with Section 3 (2)(v) of the SC/ST Act,

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1989, sentenced each of the accused to undergo imprisonment for life & to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one month. However, he did not pass separate sentence for commission of offence under Section 3 (2)(v) of the SC/ST Act on the ground that same has been included in Section 302 of the I.P.C. In addition to that, accused Damodas @ Damodar has been convicted for commission of offence under Section 352 of the I.P.C. and sentenced to the period already undergone by him.

The case of the prosecution, in brief, is that on 20-8-2000 at about 6 p.m. Bholaram (PW-3) lodged a report in the Police Station Basna before Station House Officer, D.K. Sharma (PW-9) to the effect that today at about 3 p.m. when he along with his father was digging groundnuts in their agricultural field, Daulat and Nepal entered their agricultural field carrying axe in their hands. Damodar was also there. When he along with his father was digging groundnuts, accused Daulat and Nepal started abusing in the name of mother. They attacked his father with axe whereas, accused Damodas ran after him carrying sickle in his hand. He ran towards the village, on the way, Sahdev Teli met him. After reaching the village, he informed his sister Rohnibai, Parshuram, thereafter, he along with Parshuram went to the village Devri and informed Dhoop Singh his uncle.

Receiving this report, Station House Officer, Dinesh Sharma (PW-9) registered FIR Ex.P/7 for commission of offence under Sections 302, 307/34 of the I.P.C. and Section 3 (2)(v) of the SC/ST Act. Merg intimation Ex.-P/8 was also given by Bholaram. The Investigating Officer

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left for scene of occurrence, after giving notice Ex.P/10 to the Panchas, prepared inquest Ex.P/11 on the body of the deceased. Site plan Ex.P/9 was prepared. Based on the memorandum Ex.P/4 given by Daulat Ram, axe was recovered from him under Ex.P/1. Based on the memorandum Ex.P/5 given by Nepal, axe was recovered under Ex.P/2. Based on memorandum Ex.P/6 given by accused Damodas, sickle was seized under Ex.P/3. The dead body of the deceased was sent for postmortem examination under Ex.P/14 to the Primary Health Centre, Basna where Dr. H.L. Jangde (PW-7) conducted postmortem on the body of the deceased and prepared post-mortem report Ex.-P/12. He opined that cause of death was haemorrhagic shock due to head injury. Nature is homicidal.

After completion of the investigation, charge sheet was filed against accused Daulat Ram, Nepal & Damodas in the Court of Judicial Magistrate, 1st Class, Mahasamund, who in turn committed the case to the Sessions Judge, Raipur from where learned Special Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined 13 witnesses. Statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence, stated that they are innocent and have been falsely implicated in the crime. They examined one defence witness namely, Vickram.

Learned Special Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellants as

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aforesaid. However, accused Damodas @ Damodar was convicted under Section 352 of the I.P.C.

We have heard Shri Manoj Paranje with Shri V.A. Goverdhan, learned counsel for the appellants and Shri Ashish Shukla, Additional Public Prosecutor for the State.

Learned counsel for the accused/appellants has not disputed homicidal death of the deceased. Moreover, PW-3 Bholaram, son of the deceased and PW-5 Narad witnessed the crime in question. They have stated that the accused persons attacked the deceased with axe. The above ocular evidence is corroborated by the medical evidence of PW-7 Dr. H.L. Jangde who has stated that on 21-8-2000 at about 12.30 p.m. he conducted postmortem on the body of the deceased. He noticed as many as 3 incised wounds and 2 lacerated wounds. Injury No.1 which was on the head, beneath that injury, skull bone was fractured. He has stated that cause of death was haemorrhage as a result of head injury. Death was homicidal in nature. In view of the above ocular and medical evidence, it is established that death of the deceased was homicidal in nature.

As far as involvement of the accused/appellants in crime in question is concerned, learned counsel for the accused/appellants argued that in this case only two witnesses have been examined by the prosecution as eyewitnesses i.e. PW-3 Bholaram, son of the deceased and PW-5 Narad. He argued that as far as PW-3 Bholaram is concerned, he is an interested witness. PW-5 Narad is also an interested witness for the reason that he was an employee of the deceased. He also submitted that it has come in their evidence that number of persons were working in

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the adjoining field but they have not been examined. Therefore, merely on the evidence of these interested witnesses the accused persons cannot be convicted. He also argued that PW-5 Narad has stated that he saw that the accused persons were carrying lathis whereas, there is no lathi injury on the body of the deceased. PW-3 Bholaram has stated that the accused persons had attacked with axe. Therefore, there is contradictory evidence with regard to weapon of offence, as such being interested witnesses, and also on account of this contradiction their evidence is not worth reliance.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

As far as argument of learned counsel for the appellants that witnesses are related witnesses, therefore, their evidence cannot be believed, is concerned, law on the point is well settled. The Apex Court in the matter of **Rizan and another vs. State of Chhattisgarh, through the Chief Secretary, Govt. of Chhattisgarh, Raipur**, reported in **AIR 2003 SC 976**, in para 6, held that "the relationship is not a factor to affect credibility of a witness. It is more often than not a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such a case, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible."

Relying upon the decision of the Apex Court in **State of U.P. Vs. Paras Nath Singh and others AIR 1973 SC pg. 1073**, the Division Bench of the Kerala High Court also held in the matter of **Sahadevan Rajan and**

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

others vs. State of Kerala 1992 Cri.L.J. 2049 that "the straightforward and trustworthy evidence of relations of the deceased need not corroboration for sustaining the conviction. Such evidence cannot be discarded on the sole ground of interestedness in the prosecution case."

In the case of **Namdeo Vs. State of Maharashtra**, reported in **2007 AIR SCW 1835**, the Apex Court held that "a witness who is a relative of deceased or victim of the crime cannot be characterized as 'interested'. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive." The Apex Court also observed that a close relative cannot be characterized as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one. The Apex Court also referred to the decision rendered in the matter of **Harbans Kaur and another vs. State of Haryana 2005 AIR SCW 2074**, in which, it was held that there is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea a partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. The Apex Court further ruled that the testimony of the solitary witness can be basis for conviction. Neither the legislature nor the judiciary mandates

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that there must be particular number of witnesses to record an order of conviction against the accused. Out legal system has always laid emphasis on value, weight and quality of evidence rather that on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eye-witness, therefore, has no force and must be negatived.

If we peruse evidence of these eyewitnesses, PW-3 Bholaram, son of the deceased, has stated that on the fateful day he along with his father went to the agricultural field. They were weeding grass from the standing crop of groundnuts, at that time, accused Daulat and Nepal came carrying axe in their hands. Accused Damodas came carrying sickle in his hand who chased him in order to attack him with sickle, but he ran away. At that time, Narad was working in the field. Both the accused persons attacked his father with axe. Thereafter, he came to the house. He informed Parshuram. He along with Parshuram went to Devri and informed his uncle Dhoop Singh. PW-5 Narad has stated that at about 2 p.m. he was working in the field. He saw that accused Daulat was attacking the deceased with axe on his back, at that time, Nepal was also with Daulat. Daulat attacked Uttam 2-3 times with axe on his body. Nepal was saying 'attack, attack'. As a result of axe injury, Uttam fell down. Being frightened he came to his house. Bhola was also present on the place of the incident and he witnessed the incident. In cross-examination of these witnesses, defence has not been able to elicit any circumstance

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which makes evidence of these witnesses unreliable or untrustworthy. PW-3 Bholaram is the son of the deceased and his presence on the scene of occurrence cannot be doubted in view of his evidence. Moreover, the incident said to have taken place at 4 p.m., this witness reported the matter in the police station at 6 p.m. which is at a distance of 12 km, as per the evidence of PW-3 Bholaram, in the first instance, he went to the village, from there he went to village Devri to inform his uncle and from there he along with Dhoop Singh and Parshuram went to the police station Basna to lodge the report. Therefore, looking to the evidence of this witness, report was lodged with all promptness in which he has categorically mentioned the facts which he has stated in his evidence. Perusal of the evidence of these two witnesses reveals that PW-5 Narad has stated that only accused Daulat attacked the deceased with axe whereas, PW-3 Bholaram, son of the deceased, has stated that both the accused attacked the deceased with axe. In the circumstances, both witnesses are consistent on the attack made by Daulat whereas, as far as attack made by Nepal is concerned, that has not been corroborated by the evidence of PW-5 Narad. Therefore, we are of the considered opinion that there is no consistency with regard to the attack made by Nepal, therefore, Nepal is entitled for benefit of doubt. Evidence of PW-3 Bholaram, son of the deceased and PW-5 Narad further finds corroboration from the fact that axe in question, weapon of offence, was recovered at the instance of accused Daulat, as per the evidence of PW-9 Dinesh Sharma, even though recovery witnesses have turned hostile but there is no reason before this Court to disbelieve evidence of this witness. Moreover, their evidence also finds corroboration from the medical

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evidence, as PW-7 Dr. H.L. Jangde, who conducted postmortem on the body of the deceased, has stated that there were 3 incised wounds and 2 lacerated wounds on the body of the deceased, these injuries could be caused by axe. Therefore, evidence of PW-3 Bholaram, son of the deceased, is corroborated by recovery of axe, weapon of offence and medical evidence of Dr. H.L. Jangde.

Non-examination of the persons who were working in the adjoining field does not affect the prosecution case because in the first instance, it is common knowledge that most of the time neighbours do not want to interfere in the dispute of others. At the same time, they remain reluctant to become witness. In the second place, the evidence of PW-3 Bholaram, son of the deceased and PW-5 Narad is reliable. It is settled principle that quality of evidence is to be seen and not the quantity.

For the foregoing reasons, we are of the considered opinion that as far as accused Daulat Ram is concerned, there is legal and cogent evidence regarding his involvement in the crime in question. Therefore, finding of the trial Court convicting him under Section 302 of the I.P.C. is based on legal evidence. We do not find any illegality or infirmity in the judgment to that extent. As far as accused Nepal is concerned, as PW-5 Narad has not stated that he in fact attacked, therefore, he is entitled for benefit of doubt. His conviction under Section 302 of the I.P.C. cannot be sustained. As far as conviction of the accused persons under Section 3 (2)(v) of the SC/ST Act, 1989 is concerned, there is not an iota of evidence available on record that the accused persons attacked the deceased on the ground and for the reason that the deceased belongs to

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ST, therefore, conviction of the accused persons under Section 3 (2)(v) of the SC/ST Act, 1989 cannot be sustained.

In the result:

(i) Appeal in respect of accused Nepal succeeds. Conviction and sentence imposed upon him under Section 302 of the IPC read with Section 3(2)(v) of the SC/ST Act, 1989 are set aside. He is acquitted of the said charge. He is stated to be in detention since 20th August, 2000, therefore, he be set at liberty forthwith unless required to be detained in any other case.

(ii) Appeal in respect of accused/appellant Daulat as regards conviction and sentence imposed upon him under Section 302 of the I.P.C. is dismissed. Sentence imposed upon him including that of fine under this section is maintained. However, his conviction under Section 3(2)(v) of the SC/ST Act, 1989 is set aside. He is acquitted of the said charge.

Sd/-
L.C.BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

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